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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION TWO

In re CHRISTOPHER Y., a Person Coming  
Under the Juvenile Court Law.

MENDOCINO COUNTY DEPARTMENT  
OF HEALTH AND HUMAN SERVICES,  
FAMILY AND CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

JENNIFER Y.,

Defendant and Appellant.

A154257

(Mendocino County  
Super. Ct. No. SCUK-JVSQ-17818-01)

Jennifer Y. (Mother), mother of 20-month-old Christopher Y., appeals from the juvenile court's order declaring Christopher a dependent of the juvenile court, pursuant to Welfare and Institutions Code section 300, subdivisions (b)(1) and (j).<sup>1</sup> Mother contends substantial evidence does not support the court's jurisdictional findings that (1) there was a substantial risk that Christopher would suffer serious physical harm due to Mother's substance abuse and mental health issues, and (2) a prior dependency case, in which Mother failed to reunify with Christopher's older half sibling, further demonstrated a substantial risk of serious harm to Christopher in the present case. We shall affirm the juvenile court's jurisdictional order.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

## **FACTUAL AND PROCEDURAL BACKGROUND**

On December 19, 2017, the Mendocino County Department of Health and Human Services, Family and Children's Services (Department) filed an original petition alleging that then seven-month-old Christopher came within the juvenile court's jurisdiction, pursuant to section 300, subdivision (b)(1), due to Mother's chronic substance abuse and her chronic untreated mental illness issues, and subdivision (j), due to her failure to reunify with Christopher's older half sibling, K.M.

In the detention summary report, also filed on December 19, 2017, the social worker reported that in August 2017, the Department had received reports stating that Mother had not brought Christopher to his doctor for "well baby" checks or immunizations for several months and that she had shown up at a hospital emergency room for three days in a row with her and Christopher's stool in a bag. She was digging in the stool with her bare hands, saying there were worms in her and Christopher's stool and hair. She appeared delusional and, when informed there were no worms present, said she would go to another hospital to find someone who believed her.

On December 12, 2017, the Department received a report that Mother was smoking methamphetamine in her room with Christopher present. On December 14, the social worker went to Mother's home unannounced to investigate the report. Mother was not present, but the front of the home "smelled overwhelmingly of fresh marijuana." There were soiled diapers and garbage strewn across the back yard. On December 15, the day Christopher was removed, the social worker again went to Mother's home, where she encountered Mother leaving the house with Christopher. Mother said she was going to meet with her attorney regarding certain people who were harassing her or had stolen from her. When the social worker explained the reason for her visit, Mother said the yard was a mess because her dogs had gotten into the garbage. "She appeared suspicious and paranoid throughout the conversation and was unable to maintain a consistent train of thought."

The social worker then called the Mendocino County Sheriff's Department for assistance and learned that deputies were already responding to the home. The social

worker also learned that Mother had not been meeting with her attorney, but had been at the Mendocino Volunteer Fire Department to report that someone had stolen her “ ‘prescription.’ ” When the social worker met the deputies at Mother’s home, they reported that the sheriff’s department had a long history of contacts with Mother “as a suspect in domestic violence and drug related incidents and that their agency would have concern regarding a young child being safe in [Mother’s] care due to ongoing mental health and substance abuse concerns.” They said Mother’s last contact with law enforcement occurred on August 17, 2017, when she caused a disturbance at the Fort Bragg Police Department.

The deputies subsequently located Mother at the Fort Bragg Police Department, where she reported that her marijuana prescription had been stolen. She “presented as being fairly hysterical; she was dramatic, evasive, and not cooperative.” When the social worker and deputies asked her to drug test, Mother refused. She also refused to take a field sobriety test. Mother repeatedly said she was being bullied; she was crying and shaking, and not listening to the deputies. The social worker then took custody of Christopher. The next day, Mother came to the Department’s Fort Bragg office asking where her son was. When asked to submit to a drug test, she left, saying she was going to contact her attorney.

In the detention report, the social worker further reported that K.M., Christopher’s half sister, had been the subject of a dependency case under subdivision (b) of section 300, based on general neglect, following numerous referrals including one in which Mother was found to be the primary aggressor in a domestic violence incident that took place in K.M.’s presence. Following subsequent referrals, K.M. was found to be safe in her father’s custody, with a protective order against Mother. A voluntary case was opened in July 2014, and a petition was filed in May 2015. The father received family maintenance services and Mother received reunification services. On August 1, 2016, the

case was dismissed, and the father was granted custody of K.M.<sup>2</sup> In September 2016, a referral against Mother for general neglect of K.M. was substantiated, based on Mother living in a filthy home and contacting 911 to stop a dispute during her one-hour visit with K.M. Concerns were also expressed that Mother was bipolar and unmedicated and that she was mentally unstable and could not adequately care for K.M.

At the conclusion of the December 21, 2017 continued detention hearing in this case, the court noted “that there’s a number of fairly significant allegations regarding a seven-month-old child. Nearly a seven-month old [*sic*] is extraordinarily vulnerable, dependent on a parent for all aspects of safety and care.

“Mother, according to the social worker, was found living in a household that did not meet minimal community standards for health and safety. There are concerns about mother’s mental health, her behavior was described as erratic, belligerent, incoherent at times, not making sense.

“There was a prior dependency case regarding a half sibling which was concerning to the court because this does tend to show that this is [not] a transient temporary condition [and] in fact is an on-going issue of untreated or inadequately treated mental health.

“There are a lot of referrals regarding this mother and while referrals by themselves are not sufficient, it does tend to show a pattern of behavior over time which is concerning as to Mother’s ability to safely care for Christopher.” The court then ordered Christopher detained, pending the jurisdictional hearing.

In the jurisdiction report filed on January 8, 2018, the social worker reported that Christopher had been placed in a foster home. Medical records regarding Christopher showed that medical staff had spoken to Mother more than once about the importance of not exposing Christopher to marijuana. On December 7, 2017, Mother appeared at the doctor’s office “ ‘nearly hysterical’ ” because Christopher had a fever after receiving

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<sup>2</sup> On November 9, 2018, we granted the Department’s unopposed request for judicial notice of certain court records filed in K.M.’s case.

immunizations and she was terrified that the immunizations had caused him “some horrible damage.” The nurse practitioner who met with Mother noted that she “had a ‘complicated psychiatric history but is not currently under any kind of care.’ ”

The social worker further reported that Mother was refusing to participate in any assessment or services because she believed Christopher would be returned to her at the next hearing. She also refused to participate in scheduling visitation. When the social worker could not reach Mother by phone, she and another social worker went to Mother’s home on January 3, 2018. Mother “was extremely hostile and agitated” and asked the social workers to leave her property. The following day she returned the social worker’s phone call and participated in scheduling visitation.

The alleged biological father (Father) told the social worker that, assuming he was the biological father, he did not believe he would be participating in any juvenile court proceedings “due to his fear of [Mother] and her ‘stalking’ behavior. [Father] reported that [Mother’s] unstable mental health had caused such a problem for [him] and his family that he had to move from the area.” He had attempted to obtain a restraining order to protect him from Mother but was unable to find her to serve her.

The social worker believed there was a danger to Christopher based on Mother’s “substantial history of substance abuse, domestic violence, mental instability, unsafe housing, and criminal behavior.” Mother also had “a history of not taking accountability for allowing her poor choices to place her child at substantial risk of harm in her care. The [Department] is worried that if [Mother] does not accept help in addressing current conditions that she will not be able to ensure that she is able to meet the needs of a very young child.”

After the filing of the jurisdiction report, DNA testing confirmed the identity of Father as Christopher’s biological father. In addition, the paternal grandmother filed a relative information form in which she stated that she wanted to do whatever was needed to help Father and Christopher, including providing a home until Christopher was placed with Father. She further stated, however, that she was concerned that Mother seemed

“mentally unstable,” and she would want to make sure that she and Christopher would be safe.

At the February 14, 2018 jurisdictional hearing, the court admitted into evidence the Department’s jurisdiction report, eight photographs of Mother and Christopher, a photograph of Christopher and his aunt, a copy of Mother’s medical marijuana authorization, and a page from a July 2016 addendum report in the case of Christopher’s half sibling, which discussed the results of Mother’s drug tests.

Social Worker Jennifer Hamilton testified that she had been to Mother’s house three times, but Mother had never let her enter. Each time she was outside of the house in December 2017, however, “[t]he whole yard, probably at least a hundred yards around, smelled so strongly of marijuana that you could just inhale it in.” On December 15, the date Christopher was detained, both he and his diaper bag smelled strongly of fresh (as opposed to burnt) marijuana. Since detention, Mother had refused to meet with Hamilton and had refused all requests to drug test. Mother had been offered supervised visitation twice a week but had visited only 3 times out of 16 possible visits. Mother had informed the Department that she would not be visiting because she was out of state, first for three weeks, and then for one week.

In addition to what was already in the jurisdiction report, Mother had exhibited behaviors that caused Hamilton concern about her mental health. The three or four times Hamilton had seen Mother at court, Mother had behaved erratically, which included cornering and berating Hamilton, “[s]peaking out of turn, fragmented thinking, going from crying to being mad, having to be redirected by the court, [and denying] any culpability with the Agency’s concerns.” Hamilton was not sure whether these behaviors were symptoms of mental health or substance abuse issues, which was why she wanted Mother to participate in an assessment. Mother’s behavior went beyond the stress parents might exhibit when dealing with the Department. She acted “[i]rrational, erratic, paranoid, and confrontational.”

Christopher was eating, sleeping, and growing well, and there was no evidence that he had been affected by exposure to marijuana. There were, however, developmental

concerns. Christopher previously had difficulty getting up on his hands and knees, was unable to be comforted, had rigid muscle tone, and the back of his head was extremely flat, which indicated he had spent a great deal of time in a car seat. He now could pull himself up and could be comforted but the Department wanted him to undergo a developmental assessment, which Mother had refused to allow.

Mother also testified at the jurisdictional hearing. She had refused to speak to the social worker without her lawyer present for her own protection because social workers had a way of “bending [her] words around.” Mother had refused the social worker’s request to drug test on the day Christopher was detained because she “felt threatened, bullied and bombarded with something that wasn’t even a case.” Her lawyer also told her she did not have to drug test. Mother had not received any paperwork about a developmental assessment for Christopher. She never spoke with any agencies without her lawyer present or without making a recording.

Mother had visited with Christopher four or five times, although she had missed some visits because she had to go home to Chicago to get help and support from her family, “financially and mentally.” She flew to Chicago between court dates. Mother still did not understand why Christopher had been removed from her care. She had been unsuccessful in reunifying with her older child, K.M., because she did not have transportation to get to classes. She now had remedied that issue.

Mother had been diagnosed with ovarian cysts when she was 18 years old and had used marijuana since that time. Currently, in addition to smoking marijuana, she sometimes used it in the form of candy, a pill, or a salve. She kept all her marijuana in child proof containers. To smoke marijuana, Mother stepped outside in a smoking jacket while he slept, with a baby monitor on her hip. She had never exposed Christopher to marijuana. In addition, she used marijuana with “CBD qualities” for medical purposes only, which meant she never had any psychedelic effects from it. She had been using this type of marijuana for four or five years. When asked why, if this was the case, four drug tests from the previous case in May 2016, showed the presence of THC, Mother said some hybrid strains of marijuana have both CBD and THC. Regarding why Christopher

smelled like marijuana, it could be because she would buy her medical marijuana and transport it to her house.

At the conclusion of the hearing, the court sustained the allegations in the petition. The court stated that it had taken judicial notice of and reviewed the jurisdictional allegations and findings from the prior case involving K.M. The court then found, “[w]ith respect to the current petition it’s a case where there’s a tremendous amount of smoke. And the question is does it rise to the level of a petition I can sustain? In all honesty if it were just based upon this petition I’m not sure I could. [¶] But based upon the history of [Mother] I do find that [the allegations] in the petition are sustained by a preponderance of the evidence.”

The court explained: “There’s a credibility issue [Mother] has with the court. It’s not so much from the number of visits, because I can understand that. It’s hard to remember whether it’s three, four or five, but the court doesn’t find credible the fact that marijuana was completely away from the minor, yet the minor still smelled of marijuana. [¶] And the smell of marijuana by itself is not necessarily something that’s healthy for a child, but I don’t know if it’s unhealthy either. Somehow the child’s having access to the marijuana that is not coming through in [Mother’s] testimony or otherwise. And that by itself is troublesome, particularly in light of the prior case where substance abuse was a specific concern of the Department, and that was one of the jurisdictional sustained allegations in the prior case.

“The emotional or mental health issues, they were also part of the prior case. And I can appreciate the fact that [Mother] has gone to Chicago for emotional support of her family. I’m not saying there’s anything untoward about getting support from your family, but I do find because of the fact there has been an ongoing mental health issue for over two years, and I’m not convinced it’s been resolved, [¶] I think that still needs to be addressed by [Mother] and she needs to address it upfront with the Department and try to be cooperative. . . . [¶] [Mother], many of the things I see in the medical records for Christopher are commendatory. There are not many things there that I found to be a real problem. For instance, you’re coming back the day after immunizations when your child



has a fever, and even if they say you're almost hysterical, I don't have a problem with that. [¶] . . . [¶]

“[Mother], it's the other kind of behavior that when you're interacting with the Department and other individuals, and it's a sequence from what was occurring two years ago with [K.M.'s] case. [¶] I also see in [K.M.'s] case that at the time of the report that was done that concluded the case there that you had at that point completed 24 of 52 weeks of anger management . . . . [¶] And you did not get joint custody coming out of that case. It was sole legal and sole physical custody to [K.M.'s father] and you had visitation once a week. . . . So there are other things I—that give rise to the credibility questions.

“[Mother], you specifically said back two years ago when you had positive tests for alcohol that you didn't think you should not be able to drink. You thought that was not the business of the Department. [¶] You may not have alcohol issues now, but they haven't been able to test you. But this is the business of the Department. They want to make sure that whatever you are using is not going to somehow be harmful to Christopher.” The court also expressed concern that in prior testing, Mother's THC levels had been “extremely high, yet your sense is you're not getting stoned. But I'm cornered [*sic*] that you're the sole care provider for your son and even though he may be asleep, this is a risk factor.” The court then set the matter for a dispositional hearing.

In the disposition report filed on March 12, 2018, the social worker reported that Christopher had some developmental and behavioral issues that needed further assessment, but Mother had said she was not willing to consent to an assessment or any recommended services. The Department had been unable to engage with Mother to develop a case plan and to determine appropriate service assessment referrals. When asked to make an appointment on February 14, Mother said she was a good mother and declined to meet with the social worker. Mother had visited with Christopher four times, during which she was appropriate and demonstrated that she “loves her child very much.” But she had not visited him over the past month. She did not return any calls from the Department until March 6, when she informed the Department that she had been in

Chicago since the last court hearing, but that she would meet with the social worker after the next court hearing to review her case plan.

The paternal grandmother was no longer willing to proceed with placement based on Father's desire that she not get involved and due to her fear that it might lead to Mother stalking her again.

The social worker noted that Mother's failure to cooperate and display at times of "volatile behaviors" were "consistent with either mental diagnosis or untreated substance abuse related issues. Unfortunately, these are the same behaviors that [Mother] demonstrated in the past leading to her other child being placed with the father . . . ." The Department did not recommend that services be offered to either Mother or Father, who was also an absent parent, and stated that one or more reunification bypass provisions may be applicable to both parents.

At the March 15, 2018 dispositional hearing, the Department informed the court that it had decided it would be appropriate to provide reunification services to Mother only and requested time to complete the case plan. The court ordered reunification services, including a psychological evaluation, for Mother. The court ordered the bypass of services for Father. It then set a hearing date to adopt Mother's case plan and finalize her dispositional orders.

On March 28, 2018, at the continued dispositional hearing, Mother appeared by telephone from Chicago. The court ordered out of home placement for Christopher and reunification services for Mother, to begin when Mother returned from Chicago on April 8. Mother's case plan objectives included substance use disorder treatment, mental health services, and parenting skill development.<sup>3</sup> The court also reiterated that it was bypassing services for Father.<sup>4</sup>

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<sup>3</sup> When minor's counsel requested a developmental assessment for Christopher, which Mother had been disputing, the court had to repeatedly admonish Mother—who was arguing that an assessment was unnecessary—to stop interrupting.

<sup>4</sup> Father has not appealed the court's jurisdictional or dispositional orders.

On May 7, 2018, Mother filed a notice of appeal from the court's jurisdictional and dispositional orders.<sup>5</sup>

## **DISCUSSION**

Appellant challenges the court's jurisdictional findings, made pursuant to section 300, subdivisions (b)(1) and (j).

Under section 300, subdivision (b)(1), a child is subject to juvenile court jurisdiction if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the inability of his or her parent or guardian to adequately supervise or protect the child . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse."

Under section 300, subdivision (j), a child is subject to juvenile court jurisdiction if "[t]he child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child."

"At a jurisdictional hearing, the juvenile court 'shall first consider . . . whether the minor is a person described by Section 300, and for this purpose, any matter or information relevant and material to the circumstances or acts which are alleged to bring him or her within the jurisdiction of the juvenile court is admissible and may be received in evidence. However, proof by a preponderance of evidence, legally admissible in the trial of civil cases must be adduced to support a finding that the minor is a person described by Section 300.'" [Citation.]

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<sup>5</sup> In her briefing on appeal, Mother does not separately challenge the court's subsequent dispositional order, removing Christopher from her custody.

‘While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm.’ [Citation.] Thus previous acts of neglect, standing alone, do not establish a substantial risk of harm; there must be some reason beyond mere speculation to believe they will reoccur. [Citations.]” (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564–565.)

“In a challenge to the sufficiency of the evidence to support a jurisdictional finding, the issue is whether there is evidence, contradicted or uncontradicted, to support the finding. In making that determination, the reviewing court reviews the record in the light most favorable to the challenged order, resolving conflicts in the evidence in favor of that order, and giving the evidence reasonable inferences.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450–451; accord, *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820, abrogated on another ground by *In re R.T.* (2017) 3 Cal.5th 622, 628–629.)

Here, Mother contends substantial evidence does not support the court’s jurisdictional finding that there was a substantial risk that Christopher would suffer serious physical harm due to Mother’s substance abuse and mental health issues. (See § 300, subd. (b)(1).) Mother also contends substantial evidence does not support the court’s jurisdictional finding that there was a substantial risk that Christopher would suffer serious physical harm based on the prior dependency case, in which Mother failed to reunify with K.M., Christopher’s older half sibling.

The record reflects that Mother had behaved erratically while Christopher was in her care and that there were present concerns about her mental health and/or substance use. For example, she brought her and Christopher’s stools to a hospital emergency room in August 2017, digging into the stool with her bare hands, insisting there were worms present and appearing delusional to medical personnel. Following Mother’s appearance at Christopher’s doctor’s office in December 2017, where she expressed terror that Christopher had suffered damage from immunizations, a nurse practitioner noted that Mother had a complicated psychiatric history but was not currently under any kind of care. On December 15, the day Christopher was removed, Mother appeared to be

suspicious, paranoid, and unable to maintain a consistent train of thought when the social worker first approached her about a report that she was smoking methamphetamine in Christopher's presence. Sheriff's deputies who had had contact with Mother expressed concern to the social worker about a young child being safe in Mother's presence "due to ongoing mental health and substance abuse concerns." Mother subsequently presented as hysterical, dramatic, evasive, and uncooperative when again approached by the social worker and deputies. She also refused to drug test or take a field sobriety test. Mother's house and yard also smelled strongly of fresh marijuana, as did Christopher and his diaper bag.

Father had expressed fear of Mother and concerns about her unstable mental health, which had caused such problems for him and his family that he had moved out of the area. In addition, while the paternal grandmother initially stated that she would be open to placement, she decided she could not take Christopher, due to concerns about Mother's mental instability and her and Christopher's safety.

The record also contains evidence that Mother was extremely resistant to participating in a psychological assessment to help determine the nature of her issues, or to even schedule visitation. The social worker had trouble reaching Mother by phone and when she went to her house, Mother was hostile and agitated. In the two months after detention, Mother had refused to meet with the social worker or to drug test. Mother also refused to allow a developmental assessment for Christopher, who had some concerning symptoms. She also had been offered twice weekly visitation but had only visited 3 times out of 16 possible visits, due to being out of state for long periods of time. When the social worker saw Mother in court, she was concerned about Mother's irrational, erratic, paranoid, and confrontational conduct, although she was not certain whether her behaviors were symptoms of mental health or substance abuse issues.

There were also concerns that Mother was repeating the same pattern of substance abuse and mental health related issues that were not resolved in the prior case with K.M., which had terminated only one year earlier and involved sustained allegations of

substance abuse, criminal activity, and untreated mental health issues.<sup>6</sup> Mother had failed to fully cooperate in services then and the case had ended with K.M.'s father being granted sole legal and physical custody of the child, with Mother having only supervised visitation.

Mother's testimony at the jurisdictional hearing was also problematic. She still did not understand why Christopher had been removed from her care and said she had not reunified with K.M. because she did not have transportation to get to classes. Mother also testified that she had never exposed Christopher to marijuana, even though he and his diaper bag both smelled strongly of marijuana on the day of his removal. She also said she had used marijuana with only CBD in it for four or five years, despite the fact that testing had found high levels of THC in her blood in the prior case.

The court found mother not credible, noting that Christopher somehow had access to marijuana despite Mother's insistence that he had not. The court found this troublesome in light of the concerns about substance abuse in the prior case with K.M. The court also was concerned about Mother's mental health, considering both the ongoing mental health issues involved in the prior case and Mother's apparent unwillingness to address those issues both then and now. The court was also troubled that Mother, the sole care provider for an infant, was smoking marijuana while Christopher slept.

Considering all of this evidence of Mother's current mental health and/or substance abuse issues, in addition to her lack of credibility and resistance to interacting with the Department, drug testing, or engaging in services, together with her failure to reunify in the recent case involving K.M., in which many of the same issues were left unresolved, we conclude substantial evidence supports the juvenile court's findings that there was *currently* a substantial risk that Christopher would suffer serious physical harm

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<sup>6</sup> During that case, Mother had been diagnosed in August 2015 with cannabis, opiate, and benzodiazepine dependence and methamphetamine abuse, as well as "R/O Impulsive [*sic*] Control Disorder, NOS and R/O Borderline and Histrionic Personality Disorder."

due to Mother’s substance abuse and mental health issues. (See § 300, subds. (b)(1) & (j); *In re Ricardo L.*, *supra*, 109 Cal.App.4th at pp. 564–565; *In re Alexis E.*, *supra*, 171 Cal.App.4th at pp. 450-451.) The court’s concerns were especially justified, given that at the time of the jurisdictional hearing, Christopher was only nine months old and Mother was his sole caretaker. (Cf. *In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 824 [cases finding a substantial physical danger to a child tend to involve, inter alia, “children of such tender years that the absence of adequate supervision and care poses an inherent risk to their physical health and safety”].)<sup>7</sup>

### DISPOSITION

The order appealed from is affirmed.

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<sup>7</sup> The many cases cited by Mother in support of her argument that there was no evidence of a current risk to Christopher are distinguishable. (See, e.g., *In re A.G.* (2013) 220 Cal.App.4th 675, 683 [concluding juvenile “court erred in sustaining a petition that alleged only that Mother is mentally ill and is unable to care for the minors where Father has always been, and is, capable of properly caring for them”]; *In re Drake M.* (2012) 211 Cal.App.4th 754, 764 [evidence failed to show that father’s use of medical marijuana, to which child was not exposed, was on its own sufficient to support a finding of jurisdiction]; *In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003 [“It is undisputed that a parent’s use of marijuana ‘without more,’ does not bring a minor within the jurisdiction of the dependency court”]; *In re James R.* (2009) 176 Cal.App.4th 129, 136-137 [evidence regarding risk of harm from mother’s alleged substance abuse and mental health issues was speculative, especially given that evidence showed minors were healthy and well cared for, and father was able to protect and supervise them], abrogated on another ground by *In re R.T.*, *supra*, 3 Cal.5th at pp. 628-629; *In re David M.* (2005) 134 Cal.App.4th 822, 830 [risk of harm was speculative where evidence showed child was healthy and well cared for, parents were raising him in a clean and tidy home, and mother had tested negative for drugs some 18 times between detention and jurisdiction hearings], abrogated on another ground by *In re R.T.*, at pp. 628-629.)

Kline, P.J.

We concur:

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Stewart, J.

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Miller, J.

*In re Christopher Y.* (A154257)